No. 12818.

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

SETH J. A. WELDON and DOROTHY WELDON,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

APPELLEE'S REPLY BRIEF.

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Jurisdictional Statement.

Appellee does not challenge this Court's jurisdiction to review the District Court's order denying the motions to suppress and return the seized properties, but does call attention to the fact that some opinions have classified such an order as interlocutory, and that a distinction exists between the respective positions of the two appellants.

According to authorities to be discussed under a separate heading, there is responsible authority holding that so far as appellant Seth J. A. Weldon is concerned the order appealed from is not a "final decision" as required by Section 1291 of Title 28, United States Code. However, so far as appellant Dorothy Weldon is concerned, the order denying her motion appears to be appealable as a final decision as distinguished from an interlocutory order.

To this effect:

United States v. Rosenwasser, 9 Cir., 1944, 145 F. 2d 1015.

Statement of the Case.

This case arises from an appeal from a Minute Order denying the petitions of (1) Seth J. A. Weldon for the return and suppression of certain seized property, and (2) a like petition filed by Dorothy Weldon, the wife, seeking the return of the same property upon the contention that such property was her personal property. [R. 57.]

The property sought to be returned was seized attendant to the arrest of Seth J. A. Weldon. This arrest was conducted July 14, 1950, at which time agents of the Federal Bureau of Investigation were possessed with a warrant for the arrest of Mr. Weldon. As an incident to the arrest of Mr. Weldon, a search was conducted of the apartment occupied by the appellants, husband and wife. Among other things, the $900.00 in currency, the cigarette case in which the currency was contained and two bills of sale were seized. As noted, the currency consisted of twelve $50.00 bills and three $100.00 bills.

A verified complaint had been filed before the United States Commissioner, charging Mr. Weldon with knowingly and fraudulently concealing assets from the creditors of his bankrupt estate, pursuant to 18 United States Code, Section 152. The petitions filed in the District Court by the now appellants did not in so many words charge that the arrests conducted were illegal. They did, of course, seek either the return or the suppression of the use of such evidence.

There appears to be some substantial conflict of facts between the affidavits filed on behalf of the appellants and

those of the Federal Bureau of Investigation agents filed on behalf of the Government. Inasmuch as the record is relatively brief and is reflected in the several affidavits, no special effort shall now be made to single out such conflict. However, by way of illustration, the following is noted.

Agent Geiermann affirmed that Mrs. Weldon had stated that to her knowledge there was no money in the house. [R. 21, 26.]

That a $50.00 bill used by Mrs. Weldon in a previous transaction was the only $50.00 bill she had. [R. 20-21.]

After the search revealed the presence of the $900.00 in currency, and this fact was made known to Mrs. Weldon, she would give no direct answer as to whom the money belonged. [R. 22.]

And at no time did Mrs. Weldon state that the money found belonged to her, although she was asked this specific question several times. [R. 22-23.]

Mrs. Weldon told Agent Haack that when she married Mr. Weldon she did not have any money and did not even have proper clothes. [R. 21.]

ARGUMENT.

I.

Does This Court Have Jurisdiction to Review the District Court's Order Denying the Petitions to Suppress and Return the Seized Articles?

Appellee's position on this point is to merely call to the attention of this Court several of the leading authorities on this proposition.

Appellant Mrs. Weldon was a stranger to the criminal action; she was not named as a defendant in the complaint that was filed. [R. 37-38.] Such being the case, it would appear that, pursuant to 28 United States Code, Section 1291, so far as Mrs. Weldon is concerned, the order denying her petition for the return of the property was a "final decision."

To this effect:

United States v. Rosenwasser, 9 Cir., 1944, 145 F. 2d 1015, 1017:

> "* * * Similarly, if the suppression of evidence is sought by a stranger to the criminal action, the proceeding is regarded as independent and an order therein is final and appealable. Go-Bart Importing Co. v. United States, 1931, 282 U. S. 344, 356, 51 S. Ct. 153, 75 L. Ed. 374. * * *"

That a distinction exists with reference to a party to such criminal proceeding, the following is quoted from the *Rosenwasser* case:

> "However, if a party to a pending criminal action seeks the suppression of evidence together with the re-

turn of the seized papers and if the principal purpose of the motion is to suppress evidence at the criminal trial, the proceeding is incidental to the criminal action, and the resulting order is held to be interlocutory and not appealable Cogen v. United States, 1929, 278 U. S. 221, 49 S. Ct. 118, 73 L. Ed. 275; * * *"

To like effect as holding that such an order is interlocutory, that is, when it is sought to suppress the seized evidence, reference is had to:

Cogen v. United States, 278 U. S. 221 (1929), affirming 24 F. 2d 308.

Compare:

United States v. One 1946 Plymouth Sedan, 7 Cir., 1948, 167 F. 2d 3.

This Court held that an order denying a return and suppression of documents which were alleged to have been illegally seized was a final, appealable order. See:

Freeman v. United States, 9 Cir., 1946, 160 F. 2d 72.

Also note:

Companion opinion 160 F. 2d 69.

II.

The Complaint States an Offense, Hence, the Warrant for Arrest Was Legal and Supported the Search Conducted Incidental to the Arrest of Mr. Weldon.

Appellants argue that the complaint was insufficient. It is true that as to indictments, as distinguished from complaints, it is better practice to allege more detailed facts than were set forth in this complaint. The rule pertaining to complaints requires the following:

> "* * * a written statement of the essential facts constituting the offense charged."
>
> Rule 3 of Federal Rules of Criminal Procedure.

Whereas in setting forth the requirements of an indictment a more severe and definite definition is had.

Rule 7 of Federal Rules of Criminal Procedure, pertaining to indictments, provides in part:

> "The indictment * * * shall be a plain, concise and definite written statement of the essential facts constituting the offense charged."

While there is some similarity in defining the contents of a complaint and an indictment, it is also quite apparent that a stricter rule pertains as far as an indictment is concerned.

It is generally held that the same precision and formality are not required in complaints that are required in indictments. To this effect:

> *United States v. Price,* D. C. N. Y., 1897, 84 Fed. 636.
>
> "*In re* Paul, 2 N. Y. Cr. R. 6. And see People v. Wheeler, 73 Cal. 252, 14 Pac. 796. The same precision and formality are not required in complaints that are required in indictments. * * *"

In the instant case, the offense charged was brought under 18 United States Code, Section 152, that is, a charge pertaining to the concealment of assets in connection with a bankruptcy proceeding.

The "essential facts" or elements of such an offense were contained in the instant complaint. An analysis of this complaint will so indicate. By way of illustration, we find (1) the date is alleged, (2) the location where the offense occurred is alleged, (3) the phrase "knowingly and fraudulently", as employed in the statute, is charged, (4) the concealment from the creditors of the bankrupt estate of Seth J. A. Weldon (the defendant) is charged, and (5) the character of the things charged to be concealed is characterized as "property."

Appellants complain that because the property alleged to have been concealed is not more specifically characterized the complaint is insufficient. It is submitted that the term "property" is a very broad term and that such designation is adequate, and that, while it might have been better pleading to have particularized, still the general, all-inclusive term "property" is sufficient.

The Bankruptcy Act, unlike some federal statutes, does not differentiate between the amount or value of the property that must be concealed to constitute such an offense. While it is improbable that anyone would be prosecuted for the concealment of property of a very slight value, still the amount or character is no defense. Hence, it would appear that it was not necessary to have alleged more than was contained in the instant complaint.

A case directly in point, wherein it was held that the value of the property concealed is not an *essential* part of the crime, is:

> *Kanner v. United States,* 2 Cir., 1927, 24 F. 2d 285, 287.

In the *Kanner* case, it was urged that the indictment was insufficient because it did not particularly describe nor value the property alleged to have been concealed. The Court stated, in sustaining the indictment, at page 287:

> "* * * But the value of the property concealed is not an essential part of the crime. The statement of it is therefore surplusage."

Purely by way of persuasion, attention is invited to the rule of law so far as complaints for extradition are concerned. Here, too, do the Courts recognize that such a complaint need not set forth the offense with the particularity of an indictment.

> *Bernstein v. Gross,* 5 Cir., 1932, 58 F. 2d 154.
>
> "* * * We are not here concerned with refinements of pleading in either jurisdiction, such as the necessity of more minutely describing the money ob-

tained or alleging its value. Extradition will not be refused for such defects. Fernandez v. Phillips, 268 U. S. 311, 45 S. Ct. 541, 69 L. Ed. 970." (P. 155.)

The cases cited by appellants in support of their contention of the insufficiency of the instant complaint appear to all refer to *indictments* and *not* rulings of the Court with reference to *complaints*. It has already been noted, both from the quoted Federal Rules and from practice, that the same precision and formality is not required in complaints as is required in indictments.

* * * * * * * * *

Even with respect to indictments, the modern practice, especially since the adoption of the Federal Rules of Criminal Procedure, is to consider the adequacy of indictments on the basis of practical as opposed to technical considerations.

The sufficiency of Form 1 of the Appendix of Forms to the rules of criminal procedure was held to be ample in a murder charge, although this form omits the phrase "with malice aforethought," which phrase is specifically set forth in the statutory definition of murder. (18 United States Code, 452, 1946 Ed.)

To such effect:

United States v. Ochoa, 9 Cir., 1948, 167 F. 2d 341.

The sufficiency of Form 6 of the Appendix of Forms of the Rules of Criminal Procedure was sustained, although the information charging the transportation of a stolen vehicle failed to charge "interstate or foreign commerce," but did charge transportation from one state to another.

See:

Godish v. United States, 10 Cir., 1950, 182 F. 2d 342.

Although the Rules and Form 6 were not in effect at the time of the offense charged, the Appellate Court considered Form 6 "* * * powerfully persuasive that an indictment in such form is constitutionally sufficient to inform the defendant of the nature and cause of the accusation against him, * * *."

To this effect:

Myles v. United States, 5 Cir., 1948, 170 F. 2d 443.

It should be observed that Form 6 of the Appendix of Forms does not provide for either the name of or a more detailed description, such as the engine number, etc. It merely provides for a "stolen motor vehicle" in setting forth a suitable form for charging a violation of the Dyer Act.

Additional illustrations of the tendency to liberally construe the sufficiency of indictments by this Court are the following.

With regard to a perjury charge that failed to allege that the testimony given was in fact false and where the indictment was held good. See:

Flynn v. United States, 9 Cir., 1949, 172 F. 2d 12.

Another perjury indictment held to be sufficient, although it did not allege that the officer administering the oath had competent authority to administer same, is

United States v. Bickford, 9 Cir., 1948, 168 F. 2d 26.

And again this Court sustained a challenged count of an indictment charging the presentation of false claims and for aiding and abetting in so doing in

McCoy v. United States, 9 Cir., 1948, 169 F. 2d 776, at pp. 779-780.

"Appellant's construction of the indictment is too narrow. In the first place every particular relating to the charge is not required to be set out in the indictment, and it is not required that every possible combination of facts, which would constitute legal acts, should be negatived in it. Hopper v. United States, 9 Cir., 142 F. 2d 181. * * * The indictment must be considered as a whole, and the violated statute is cited in it and plainly informs the accused of the law allegedly violated."

Also note:

Eisler v. United States, C. A. D. C., 1948, 170 F. 2d 273, pp. 280-281.

It would, therefore, appear that the complaint was sufficient and adequately supported the warrant of arrest.

III.

The Warrant Was Valid and Justified the Arrest Conducted by the Federal Bureau of Investigation and the Attendant Search.

The arrest and the search in this case stands or falls upon the sufficiency of the complaint and the warrant of arrest. This is not a case where the officers justified their position because of a reasonable ground of believing that the person arrested was guilty of a felony and was likely to escape before a warrant could be obtained. It, therefore, appears to be beside the point to argue upon such an issue.

Appellee relies entirely upon the warrant of arrest issued pursuant to Rule 4(a) and (b)(1) and the sufficiency of the supporting complaint. Rule 4 of the Federal Rules of Criminal Procedure, in part, provides:

> "Warrant or Summons upon Complaint
>
> (a) Issuance. If it appears from the complaint that there is probable cause to believe that an offense has been committed and that the defendant has committed it, a warrant for the arrest of the defendant shall issue to any officer authorized by law to execute it. * * *"

It is to be noted that a warrant is authorized to issue if probable cause is reflected from the complaint. It is submitted that probable cause is reflected from the instant complaint. The rule further provides that the warrant "* * * shall issue to any officer authorized by law to execute it."

The warrant in this case was directed "To United States Marshal or any other authorized officer." By reason of 18 United States Code, Section 3052, agents of the Federal

Bureau of Investigation are specifically authorized to "serve warrants", and "make arrests." (This section is set forth on page 12 of Appellant's Opening Brief.)

The arguments presented under the preceding sub-head *i. e.* II are referred to as additional authority in support of the validity of the warrant of arrest and shall, therefore, not be repeated at this point.

IV.

The Search Conducted Was Lawful and Incidental to a Valid Arrest.

A. An Order of a Trial Court in Denying a Motion to Suppress and/or Return Seized Property Is Not to Be Reversed if Fairly Supported by the Evidence Before Such Court.

Prior to discussing the proposition that the search was lawful and incidental to a valid arrest, it would appear proper to briefly comment on the principle set forth in the immediate preceding sub-heading.

In the instant case, a distinct conflict as to certain facts is reflected in the various affidavits presented before the District Court. This conflict is apparent, hence will not be specifically analyzed in this brief. It pertains chiefly as to what Mrs. Weldon or her husband, Mr. Weldon, said or are alleged to have stated when inquired of as to whether there was any money in the house at the time the search was conducted [R. 21], also that Mrs. Weldon at no time stated the money found in the cigarette case belonged to her, although she was asked this specific question several times. [R. 22-23.] Further, Mrs. Weldon's admission that an observed $50.00 bill was the only $50.00 bill she had. [R. 26.] Mrs. Weldon's statement before

the search was started to the effect that there was no money in the house. [R. 26.] Mr. Weldon's statement concerning a bill of sale found which referred to a sale of a Crosley automobile by Weldon to Anita Price on June 13, 1950, which Crosley automobile was parked in front of the house and was the one described in the bill of sale and which car had been seen by an agent while it was being driven by Mr. Weldon on a date subsequent to the date of the bill of sale. [R. 17.]

It is conceded that appellants' affidavits either challenged the assertion contained in the affidavits submitted by the Government or attempted to give explanations of their positions.

It is a well established principle of law that upon appeals from verdicts the sufficiency of the evidence is generally a jury question.

To this effect:

Hemphill v. United States, 9 Cir., 1941, 120 F. 2d 115; cert. den. 314 U. S. 627.

It is also true that such evidence will be by the Appellate Court considered most favorable to the prosecution.

See:

Henderson v. United States, 9 Cir., 1944, 143 F. 2d 681.

A similar rule seems to prevail in the consideration of conflicting evidence when appealing from an order denying a motion to suppress or return seized properties. In other words, if the question of fact presented was resolved on conflicting and substantial evidence, such evidence may not be weighed by an Appellate Court.

To this effect:

Lowrey v. United States, 8 Cir., 1947, 161 F. 2d 30, at 34; cert. den. 331 U. S. 849.

In seeking a review from an order denying the suppression of certain evidence, the law appears to state that the creditability of testimony is for the District Judge. See:

In re Fried, 2 Cir., 1947, 161 F. 2d 453; cert. den. 331 U. S. 858.

A finding respecting the validity of a search and seizure which has substantial support in the evidence and it is reasonable inference must stand on appeal. See:

Gilbert v. United States, 10 Cir., 1947, 163 F. 2d 325.

It is, therefore, submitted that the factual matters as contained in the several affidavits presented a conflict, but that there was substantial evidence contained in such affidavits to support the District Court's order in denying the petitions of the appellants.

* * * * * * * * *

Discussion shall now refer back to the main heading, *i. e., The search conducted was lawful and incidental to a valid arrest.*

One of the latest cases of the Supreme Court on the subject of search and seizure, based entirely upon a warrant of arrest and without a search warrant, is the arrest and search conducted in the case pertaining to forged postal stamps, namely:

United States v. Rabinowitz, 1950, 339 U. S. 56.

This case reviews many of the landmark search and seizure cases.

The arrest and the attendant search were sustained. The opinion supports the validity of a general search of the accused office without a search warrant following a proper arrest on a charge of selling altered postal stamps as incident to such arrest, even though the officers had knowledge that the accused had other altered stamps and could readily have obtained a search warrant. After referring to the case of *Agnello v. United States,* 269 U. S. 20, 30, and quoting therefrom, the opinion in the *Rabinowitz* case contains the following, significant language:

> "The right 'to search the place where the arrest is made in order to find and seize things connected with the crime as its fruits or as the means by which it was committed' seems to have stemmed not only from the acknowledged authority to search the person, but also from the long-standing practice of searching for other proofs of guilt within the control of the accused found upon arrest. Weeks v. United States, 232 U. S. 383, 392. * * * (P. 61.)
>
> * * * * * * * *
>
> What is a reasonable search is not to be determined by any fixed formula. The Constitution does not define what are 'unreasonable' searches and, regrettably, in our discipline we have no ready litmus-paper test. The recurring questions of the reasonableness of searches must find resolution in the facts and circumstances of each case. Go-Bart Co. v. United States, 282 U. S. 344, 357. * * * (P. 63.)
>
> * * * * * * * *
>
> A rule of thumb requiring that a search warrant always be procured whenever practicable may be appealing from the vantage point of easy administra-

tion. But we cannot agree that this requirement should be crystallized into a *sine qua non* to the reasonableness of a search. It is fallacious to judge events retrospectively and thus to determine, considering the time element alone, that there was time to procure a search warrant. Whether there was time may well be dependent upon considerations other than the ticking off of minutes or hours. The judgment of the officers as to when to close the trap on a criminal committing a crime in their presence or who they have reasonable cause to believe is committing a felony is not determined solely upon whether there was time to procure a search warrant. Some flexibility will be accorded law officers engaged in daily battle with criminals for whose restraint criminal laws are essential.

It is appropriate to note that the Constitution does not say that the right of the people to be secure in their persons should not be violated without a search warrant if it is practicable for the officers to procure one. The mandate of the Fourth Amendment is that the people shall be secure against unreasonable searches. It is not disputed that there may be reasonable searches, incident to an arrest, without a search warrant. Upon acceptance of this established rule that some authority to search follows from lawfully taking the person into custody, it becomes apparent that such searches turn upon the reasonableness under all the circumstances and not upon the practicability of procuring a search warrant, for the warrant is not required. To the extent that Trupiano v. United States, 334 U. S. 699, requires a search warrant solely upon the basis of the practicability of procuring it rather than upon the reasonableness of the search after a lawful arrest, that case is overruled. The relevant test is not whether it is reason-

> able to procure a search warrant, but whether the search was reasonable. That criterion in turn depends upon the facts and circumstances—the total atmosphere of the case. * * *" (Pp. 65-66.)

An additional case supporting as reasonable a search and seizure where the officers had only a warrant for an arrest for alleged violations of the mail fraud statute and the National Stolen Property Act, and, while so searching and after having spent many hours in the apartment, found evidence of an entirely *different* crime, namely, papers, cards, etc., indicating a violation of the Selective Training and Service Act, is:

Harris v. United States, 1947, 331 U. S. 145.

Toward the close of the affirming opinion in the *Harris* case, the Court observes:

> "* * * But we should not permit our knowledge that abuses sometimes occur to give sinister coloration to procedures which are basically reasonable. * * *" (P. 155.)

Thus, in the *Harris* case, the agents, without a search warrant searched the apartment, that is, the living room, bedroom, kitchen and bath, intensively for five hours for two concealed checks, and any other means by which the crimes charged might have been committed. In so doing, beneath some clothes in a bedroom bureau drawer, they discovered several draft cards, the possession of which was a Federal offense.

The *Harris* case establishes that a search incident to an arrest may extend beyond the person of one arrested and to the premises under his immediate control. Such a search

is not rendered invalid by the fact that the place searched is a dwelling rather than a place of business. It may also extend beyond the room in which the accused is arrested.

> "The Fourth Amendment has never been held to require that every valid search and seizure be effected under the authority of a search warrant. Search and seizure incident to lawful arrest is a practice of ancient origin and has long been an integral part of the law-enforcement procedures of the United States and of the individual states.
>
> The opinions of this Court have clearly recognized that the search incident to arrest may, under appropriate circumstances, extend beyond the person of the one arrested to include the premises under his immediate control. Thus in Agnello v. United States, *supra,* at 30, it was said: 'The right without a search warrant contemporaneously to search persons lawfully arrested while committing crime and to search the place where the arrest is made in order to find and seize things connected with the crime as its fruits or as the means by which it was committed, as well as weapons and other things to effect an escape from custody, is not to be doubted.' It is equally clear that a search incident to arrest, which is otherwise reasonable, is not automatically rendered invalid by the fact that a dwelling place, as contrasted to a business premises, is subjected to search."

It is not appellee's intention to discuss all the authorities cited by appellants with reference to the law on search and seizure. The *Rabinowitz* and the *Harris* opinions recognize that the reasonableness of searches must find resolution in the facts and circumstances of each case.

A case relied upon by appellants, *Go-Bart Importing Co. v. United States,* 282 U. S. 344, contains the following, at page 357:

> "There is no formula for the determination of reasonableness. Each case is to be decided on its own facts and circumstances."

The case of *Weeks v. United States,* 232 U. S. 383 (1914), cited by appellants is not applicable to the facts presented here. In the *Weeks* case, Weeks was arrested at his office by police officers without a warrant. They later went to his home, found the key and entered without a warrant and searched and obtained private papers, which were turned over to the United States Marshal. On the same day, the Marshal, without a warrant, accompanied the police officers to defendant's home and seized personal letters of the defendant. Permitting the use of the letters obtained by the Marshal was prejudicial error.

Likewise, the case of *Gouled v. United States,* 1921, 255 U. S. 298, is not to point. In the *Gouled* case, papers were surreptitiously taken from the office of defendant by a "friend" acting under directions of a Government agency. Other papers were obtained by search warrant, but the same were not pertinent to the case.

In *Agnello v. United States,* 269 U. S. 20, 1925, also relied upon by appellants, an entirely different situation existed as compared to the instant case. In the *Angello* case, the arresting officers saw defendant through a window at a co-defendant's house violating the narcotics law, rushed in, arrested defendants, and found a number of packages of cocaine in Agnello's pocket and seized same. The officers then went to Agnello's home and searched it without a search warrant, finding a can of cocaine in de-

fendant's bedroom, which was produced at the trial. The Court held the subsequent search of defendant's home without a search warrant was illegal and not incidental to his arrest.

The *Agnello* case contains this language, at page 30:

> "The right without a search warrant contemporaneously to search persons lawfully arrested while committing crime and to search the place where the arrest is made in order to find and seize things connected with the crime as its fruits or as the means by which it was committed, as well as weapons and other things to effect an escape from custody, is not to be doubted. See Carroll v. United States, 267 U. S. 132, 158; * * *"

The case of *Carroll v. United States,* 267 U. S. 132, at 158, recognizes that when a man is legally arrested for an offense, whatever is found upon his person or in his *control,* which is unlawful for him to have and which may be used to prove the offense, may be seized and held as evidence.

To like effect:

Brinegar v. United States, 1949, 338 U. S. 160.

A case containing exhaustive research on the subject of search and seizure is that of:

United States v. Bell, 1943, 48 Fed. Supp. 986.

Many of the authorities cited by appellants in their brief, and others, are analyzed in the *Bell* opinion. The *Bell*

opinion, page 997, in referring to "exploratory" seizures, comments on such as follows:

> "When the cases condemn 'exploratory' investigations or 'exploratory' seizures, they refer to the unlimited seizure of the type which occurred in United States v. Lefkowitz, *supra,* and other cases where the officers were merely seeking, *in an unrestrained manner,* evidence which did not relate to the offense."

A search of a hotel room and a suitcase found in a closet following defendant's arrest in the hotel room was held to be fairly incidental to his arrest and lawful.

To such effect:

United States v. Petti, 2 Cir., 1948, 168 F. 2d 221.

A case dealing with a search conducted in making an arrest for an offense charged under the Bankruptcy Act and where it was held that such search was not exploratory is that of:

Matthews v. Correa, 2 Cir., 1943, 135 F. 2d 534.

In the above case, the defendant was charged with concealing money, etc. from the Trustee in bankruptcy. The defendant contended her house was searched "from cellar to roof." This case contains the following, at page 537:

> "* * * Under the circumstances of the charge, it would seem most appropriate that the officers should look around for property concealed or withheld from the bankruptcy trustee; and if they found it or docu-

ments concerning it, this would be matter which they should retain. The line between fruit of the crime itself and mere evidence thereof may be narrow; perhaps this turns more on the good faith of the search than the actual distinction between the matters turned up. In any event, the articles in question are more than evidential; they are the very things withheld.

Nor can we say that the intensity of the search exceeded reasonable bounds. * * *"

Before closing our discussion on this point, we call attention that the Fourth Amendment forbids only *unreasonable* searches, or as said in:

United States v. Rabinowitz, 1949, 339 U. S. 56, 65.

"It is appropriate to note that the Constitution does not say that the right of the people to be secure in their persons should not be violated without a search warrant if it is practicable for the officers to procure one. The mandate of the Fourth Amendment is that the people shall be secure against *unreasonable* searches. * * *"

Inasmuch as we believe we have already discussed them, no further specific comment shall be had to the matters presented in Appellants' Opening Brief under the designations of Points 4, 5 and 6.

Conclusion.

Appellee respectfully submits that the search and seizure conducted were not unreasonable, that they were incidental to a lawful arrest and that the order of the trial court in denying the petitions of both appellants should be affirmed.

Respectfully submitted,

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